



## WHO IS THE PRESIDENT?

### A question we should never have to ask



*"In an age of terrorism and a time of war, this is no longer mere fodder for Tom Clancy novels and episodes of 'The West Wing.'"*

What if...

...a terrorist strikes the Capitol during the State of the Union speech. One cabinet member does not attend in case of just such an event. He or she is now the only person in the presidential line of succession. But following the attack, the cabinet member refuses to take over as President. **Who is the President?**

...the President, the vice president, the speaker of the House, the Senate president pro tempore, and all Cabinet members live and work in the greater Washington, D.C. area. A catastrophic terrorist attack strikes Washington, killing or incapacitating the entire line of succession to the Presidency and the President himself. **Who is the President?**

...the President and vice president are attacked. The President dies; the vice president is incapacitated and likely to remain that way for months. The speaker of the House decides he doesn't want to resign as speaker (as the statute requires) to become President for only a short time, so the Senate president pro-tempore of the Senate assumes the presidency. Some weeks later, when it becomes clear the vice president's incapacitation will become permanent, the speaker decides he would like to become President and cites the statutory order of succession. However, the recently appointed President refuses to step down. **Who is the President?**

...the President, the vice president, and the speaker—together with most members of the House—are killed or incapacitated. The remaining members—a small fraction of the entire House membership, representing a narrow geographic region of the country and a narrow portion of the ideological spectrum—claim that they can satisfy the constitutional quorum requirement. They elect a new speaker, who claims to be the acting President. The Senate president pro tempore and the secretary of state also assert claims to the Presidency. **Who is the President?**

...the President and the Vice President are killed or incapacitated. Next in the statutory line of succession is the Speaker of the House, who happens to be a member of the party opposing the President and the Vice President. However, the Secretary of State contends that, legally, he is the President. The Secretary fervently and persuasively argues that members of Congress cannot constitutionally serve as President, because they are legislators, and not "officer[s]" for purposes of the Article II Succession Clause. (Recall Alexander Haig's famous 1981 claim that, "[c]onstitutionally, gentlemen, . . . you have the President, the Vice President and the Secretary of State, in that order . . . As of now I am in control here in the White House, pending return of the vice president.") **Who is the President?**

*"These scenarios seemed unlikely two years ago. Today, they are very real possibilities and very real threats to our constitutional form of government in the event of a disaster. Two years ago, there seemed little cause to address this issue. Today, we cannot wait. In the event of such a crisis, we will need clear, immediate redress for the continuity of our government and will have no time to address these issues in a Supreme Court battle—especially if the Court is a casualty of the attack."*

*"Who is the President? Whose orders should be followed by the military, by our intelligence agencies, by our domestic law enforcement agencies? If lawsuits are filed, will courts take the cases? How long will they take to rule, how will they rule, and will their rulings be respected? These are all questions America should never have to ask, especially in the aftermath of a catastrophe."*

*"Simply put, the Presidential succession statute must be fixed. And it can be if Congress would closely examine the constitutional and prudential concerns that have long been expressed regarding the presidential succession statute, and take action now, not after an attack."*

— U.S. Sen. John Cornyn (R-Texas)  
Chairman, subcommittee on the Constitution